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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,500	11/22/2006	Bernard Massie	2139-32US	4669
20/988 7590 04/22/2008 OGILVY RENAULT LLP 1981 MCGILL COLLEGE AVENUE SUITE 1600 MONTREAL, QC H3A2Y3 CANADA				
EXAMINER				
SHEN, WU CHENG WINSTON				
ART UNIT		PAPER NUMBER		
1632				
MAIL DATE		DELIVERY MODE		
04/22/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/576,500

Applicant(s)

MASSIE ET AL.

Examiner

Wu-Cheng Winston Shen

Art Unit

1632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/14/2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 and 30-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-27 and 30-32 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/5508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. The preliminary amendment dated 11/14/2007 has been received. Claims 3-5, 8-13, 16, 17, 19-22, 25 and 30-32 are amended. Claims 28, 29 and 33 are cancelled. Claims 1-27 and 30-32 are pending in the instant application.

Election/Restrictions

2. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions, which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

- I. Claims 1-12, 19, 20-24, and 30-32, drawn to a modified virus ablated of its natural receptor interactions with a cell, said modified virus comprising a non-native polypeptide, said modified virus having an altered tropism conferred by said non-native peptide, as a ligand incorporated in the capsid, and replicating only in cells that can interact with said non-native peptide, said virus being incapable of infecting a cell through a CAR-dependent entry pathway, a cell containing the modified virus, and a medicament or a precursor thereof comprising the modified virus, a pharmaceutical composition comprising the

modified virus, a kit comprising the modified virus, and a medicament comprising the modified virus.

- II. Claims 13-18, drawn to a modified virus ablated of its natural receptors interactions with an unmodified or non-naturally occurring cell, said modified virus comprising a non- native polypeptide, said modified virus having an altered tropism conferred by said non-native peptide, and replicating only in cells that can interact with said non-native peptide, said virus being incapable of infecting a cell through a CAR-dependent entry pathway, further comprising retargeting adapter, which is a de novo designed E-coil or K-coil fused ligand, comprising: i) a binding moiety for binding the non-native polypeptide and ii) a further binding moiety of a receptor for retargeting said virus on cells expressing said receptor.

- III. Claims 25-27, drawn to a method for producing the said modified virus of claim I, wherein said a modified virus ablated of its natural receptors interactions with a cell, said modified virus comprising a non-native polypeptide, said modified virus having an altered tropism conferred by said non-native peptide, and replicating only in cells that can interact with said non-native peptide, said virus being incapable of infecting a cell through a CAR-dependent entry pathway.

3. The inventions listed as Groups I-III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

Applicant's claims encompass multiple inventions, multiple products and multiple methods, and do not have a special technical feature which link the inventions one to the other, and lack unity of invention. The common technical feature in all groups, as stated in claim 1, is a modified virus ablated of its natural receptors interactions with a cell, said modified virus comprising a non-native polypeptide, said modified virus having an altered tropism conferred by said non-native peptide, and replicating only in cells that can interact with said non-native peptide, said virus being incapable of infecting a cell through a CAR-dependent entry pathway.

However, this common technical feature cannot be a special technical feature under PCT Rule 13.2 because the feature is shown in the prior art. **Nicklin et al.** generated genetically modified Ad fiber proteins with selective endothelial cells (EC) tropism by engineering these peptides into the HI loop of the Ad fiber. SIGYPLP, but not LSNFHSS, enhanced vascular endothelial cells (EC) selectivity, demonstrating maintenance of peptide-cell binding fidelity upon incorporation into virions. Nicklin et al. demonstrated that combining fiber mutations that block CAR binding (de-targeting) with SIGYPLP insertion (re-targeting) generated a novel Ad vector, AdKO1SIG, in a single component system. AdKO1SIG demonstrated efficient and selective tropism for EC compared with control Ad vectors (See abstract, Nicklin et al., Ablating adenovirus type 5 fiber-CAR binding and HI loop insertion of the SIGYPLP peptide generate an endothelial cell-selective adenovirus. *Mol Ther.* 4(6): 534-42, 2001).

4. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows: adenovirus, retrovirus, lentivirus, adeno-associated virus, Reoviridae, Picornaviridae, Parvoviridae, Papovaviridae and Caliciviridae. The following claim(s) are generic: claim 2.

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: they are distinct viruses that have different genomic composition (a DNA virus or a RNA virus), and distinct genes encoding structurally and functionally distinct viral proteins.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

MPEP 1893.03(d) Unity of Invention Rejoinder

5. MPEP 1893.03(d) states: If an examiner (1) determines that the claims lack unity of invention and (2) requires election of a single invention, when all of the claims drawn to the

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elected invention are allowable (i.e., meet the requirements of 35 U.S.C. 101, 102, 103 and 112), the nonelected invention(s) should be considered for rejoinder. Any nonelected product claim that requires all the limitations of an allowable product claim, and any nonelected process claim that requires all the limitations of an allowable process claim, should be rejoined. See MPEP § 821.04 and § 821.04(a). Any nonelected processes of making and/or using an allowable product should be considered for rejoinder following the practice set forth in MPEP § 821.04(b).

6. Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction were not required because the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In

either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103 (a) of the other invention.

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication from the examiner should be directed to Wu-Cheng Winston Shen whose telephone number is (571) 272-3157 and Fax number is 571-273-3157. The examiner can normally be reached on Monday through Friday from 8:00 AM to 4:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the supervisory patent examiner, Peter Paras, can be reached on (571) 272-4517. The fax number for TC 1600 is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Art Unit: 1632

Wu-Cheng Winston Shen, Ph. D.

Patent Examiner

Art Unit 1632

/Valarie Bertoglio/

Primary Examiner

Art Unit 1632